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**UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARK COLE, on behalf of himself
and all other similarly situated and
aggrieved,

Plaintiff,

v.

COLONIAL PENN LIFE
INSURANCE COMPANY; and
DOES 1 to 50, inclusive ,

Defendants.
Defendant.

Case No. 2:23-cv-02993- DC-AC

CLASS ACTION

**PLAINTIFF'S NOTICE OF
MOTION & MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AND
CERTIFICATION OF
SETTLEMENT CLASS**

Assigned to the Hon. Dena M. Coggins

**DATE: SEPTEMBER 19, 2025
TIME: 1:30 PM
COURTROOM: 8**

[Filed and Served concurrently with
Declaration of Todd M. Friedman;
Declaration of Zev Zysman;

**PLAINTIFF'S NOTICE OF MOTION & MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

Declaration of Settlement
Administrator; [Proposed] Order]

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Friday, September 19, 2025 at 1:30 p.m., before the United States District Court, Eastern District of California, Courtroom 8, 501 I Street, Sacramento, California 95814 (13th Floor), plaintiff Mark Cole (“Plaintiff”) will move this Court for an order granting preliminary approval of the class action settlement and certification of the settlement class as detailed in Plaintiff’s Memorandum of Points and Authorities.

This Motion is based upon this Notice, the accompanying Memorandum of Points and Authorities, the declarations and exhibits thereto, the Complaint, all other pleadings and papers on file in this action, and upon such other evidence and arguments as may be presented at the hearing on this matter.

Date: July 18, 2025

**The Law Offices of Todd M.
Friedman, PC**

By: /s/ Todd M. Friedman
Todd M. Friedman
Attorneys for Plaintiffs

**PLAINTIFF’S NOTICE OF MOTION & MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

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MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff Mark Cole (hereinafter “Plaintiff”, “Cole” or “Class Representative”), individually and on behalf of the “Settlement Class” (as defined below), hereby submits this motion for preliminary approval of a proposed settlement of this action (the “Action”) and for certification of the proposed Settlement Class. Defendant Colonial Penn Life Insurance Company (hereinafter referred to as “Colonial Penn” or “Defendant”) does not oppose the relief sought in Plaintiff’s motion (Plaintiff and Defendant shall collectively be referred to as the “Parties”). The terms of the Settlement are set forth in the Settlement Agreement and Release (hereinafter the “Settlement”).¹ *See Declaration of Todd M. Friedman (“Friedman Decl.”), ¶ 12, Ex. A.*

The proposed Settlement resulted from the Parties’ participation in an all-day mediation session before the Honorable Wayne R. Andersen (Ret) of JAMS in Chicago, Illinois and subsequent hard-fought settlement discussions, which occurred over ten months. The Settlement provides for a substantial financial benefit to the Settlement Class Members. The Settlement Class consists of: All individuals who called any of the Affected Colonial Penn Telephone Numbers from a California area code between November 22, 2022 and January 13, 2024 (the “Class Period”). The Settlement Class comprises approximately 47,503 individuals.

The compromise Settlement, reached with the guidance of Judge Andersen, will create a non-reversionary Settlement Fund to be established by Defendant in the amount of \$3,725,000. The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the Settlement Class electing to opt out or be excluded from the Settlement or for any other reason. The Settlement Fund will pay for a Settlement Administrator, Simpluris, which will be responsible for providing notice

¹ Unless otherwise specified, capitalized terms used in this memorandum are intended to have the same meaning ascribed to those terms in the Agreement.

1 to the Settlement Class, providing notice of this proposed settlement pursuant to and
2 in accordance with 28 U.S.C. § 1715 (the “Class Action Fairness Act” or “CAFA”)
3 (at Colonial Penn’s election), providing and disbursing settlement checks to
4 Settlement Class Members who submit a claim form and who do not opt-out,
5 creating and maintaining a Settlement Website, maintaining a toll-free telephone
6 number, preparing an Opt-Out List, preparing a list of persons submitting objections
7 to the Settlement and acting as a liaison between Settlement Class Members and the
8 Parties regarding the Settlement. Settlement members who submit a timely and valid
9 Claim Form and do not opt-out will receive a pro rata share of the Settlement Fund
10 in the form of a check (after any attorneys’ fees and costs awarded by the Court, any
11 Service Award to Class Representative, and any costs of claims administration are
12 deducted from the Settlement Fund). Plaintiff Mark Cole will receive a Service
13 Award of \$10,000.00 (subject to Court approval) for bringing and litigating this
14 action. Class Counsel will request an attorneys’ fee reimbursement award of
15 \$1,241,666.67 (i.e., 33 1/3% of the total settlement amount) and litigation costs (not
16 to exceed \$50,000), subject to Court approval, to be paid out of the Settlement Fund.
17 Any unclaimed funds from uncashed settlement checks shall be delivered to The
18 Electronic Privacy Information Center (“EPIC”) as a *cy pres* recipient, subject to
19 Court approval. This *cy pres* payment from the Settlement Fund is after all
20 settlement costs and direct payments to the Settlement Class are paid. Colonial Penn
21 has implemented and will continue to maintain an automated recording disclosure
22 as part of the Settlement.

23 In consideration for the Settlement Fund, Plaintiff, on behalf of the proposed
24 Settlement Class, will enter judgment pursuant to the terms of the Settlement
25 concerning the Action and unconditionally release and discharge Defendant and
26 other Released Parties from all claims relating to the Action.

27 While Plaintiff is confident of a favorable determination on the merits, he has
28 determined that the proposed Settlement provides significant benefits to the
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1 Settlement Class and is in the best interests of the Settlement Class. Plaintiff also
2 believes that the Settlement is appropriate because Plaintiff recognizes the expense
3 and amount of time required to continue to pursue the Action, as well as the
4 uncertainty, risk, and difficulties of proof inherent in prosecuting such claims.
5 Similarly, as evidenced by the Settlement, Colonial Penn believes that it has
6 substantial and meritorious defenses to Plaintiff's claims, but has determined that it
7 is desirable to settle the Action on the terms set forth in the Settlement.

8 Plaintiff believes that the proposed Settlement is fair, reasonable, and
9 adequate and satisfies all of the criteria for preliminary approval. Accordingly,
10 Plaintiff moves this Court for an order preliminarily approving the proposed
11 Settlement, provisionally certifying the Settlement Class pursuant to Federal Rule of
12 Civil Procedure 23(b)(3) ("Rule 23(b)(3)") and Rule 23(e) for settlement purposes,
13 directing dissemination of Class Notice, and scheduling a Final Approval Hearing.

14 **II. STATEMENT OF FACTS**

15 **A. Factual Background**

16 Colonial Penn is a Philadelphia, PA based life insurance company. Plaintiff's
17 operative Complaint alleges that Colonial Penn violated the California Invasion of
18 Privacy Act, Cal. Penal Code § 630 et seq. ("CIPA") by recording consumers'
19 telephone conversations without the knowledge or consent of all parties to the
20 telephone communication. Plaintiff contends he and the Settlement Class are
21 entitled to statutory damages pursuant to the CIPA. Defendant has vigorously
22 denied and continues to deny that it violated CIPA, including because it had a
23 monitoring disclosure on the Affected Colonial Penn Telephone Numbers prior to
24 the Action being filed, and denies all charges of wrongdoing or liability asserted
25 against it in the Action.

26 **B. Proceedings to Date**

27 Plaintiff filed the initial class action complaint ("Complaint") on November
28 20, 2023 in the Superior Court for the State of California, County of Sacramento. In
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the Complaint, Plaintiff alleged a cause of action against Defendant for violation of CIPA. Based on those allegations, Plaintiff sought \$5,000 per violation, as well as injunctive relief. Plaintiff's claims were brought on behalf of a class of individuals who alleged that Defendant violated the CIPA by knowingly, and/or willfully employing and/or causing to be employed certain recording equipment in order to record telephone conversations without the knowledge or consent of all parties to the telephone communication. *See Declaration of Todd M. Friedman*, ¶ 4. Defendant removed the Action to the United States District Court for the Eastern District on December 22, 2023. *Friedman Dec.* ¶ 5. Defendant filed its answer on January 26, 2024. *Friedman Dec.* ¶ 6.

For almost two years, the Parties have actively litigated the Action. Among other things, the Parties have propounded and responded to discovery and exchanged voluminous documents. *Friedman Dec.* ¶7. On June 25, 2024, the Parties attended an all-day mediation with the Honorable Wayne R. Andersen (Ret) of JAMS in Chicago Illinois. Although the matter did not settle on the date of mediation, both sides worked hard for ten months to keep exchanging further information and settlement proposals, gather additional documentation and records including from third parties, and subsequently accepted a mediator's proposal approximately ten months later. *Friedman Dec.* ¶¶8,9. As set forth below, Plaintiff respectfully requests that the Court approve the Settlement.

C. Statement of Facts

1. The Settlement Class

a. The Settlement Class

The "Settlement Class" is defined in the Agreement as follows:

"All individuals who called any of the Affected Colonial Penn Telephone Numbers from a California area code between November 22, 2022 and January 13, 2024." (Agreement § 2.1)

Based on data by Colonial Penn and its counsel, the number of unique

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1 telephone phone numbers called is approximately 47,503. This data was confirmed
2 by Plaintiff via voluminous discovery. *Friedman Dec.* ¶¶17,18.

3 **2. Settlement Payment**

4 Under the proposed Settlement, Defendant agree to establish a non-
5 reversionary Settlement Fund in the amount of \$3,725,000 (Agreement § 4.1) in
6 order to fund the following:

7 (1) providing notice to Settlement Class Members; (2) providing settlement checks
8 to Settlement Class Members entitled to receive a settlement check; (3) creating and
9 maintaining the Settlement Website; (4) maintaining a toll-free telephone number;
10 (5) providing CAFA notice (Agreement § 8.3)²; (6) to pay the proposed \$10,000
11 Service Award to the Plaintiff (Agreement § 7; and (7) payment of the proposed
12 Attorneys' Fees of \$1,241,666.67 (33 1/3% of the Settlement Fund) and litigation
13 costs of up to \$50,000 (Agreement § 6). *See Friedman Decl.*, ¶14. Any funds
14 remaining after payment of all settlement costs and payments to the Settlement
15 Class shall be paid, subject to Court approval, to the Electronic Privacy Information
16 Center ("EPIC") as a *cy pres* recipient. (Agreement § 15.5). EPIC is an appropriate
17 *cy pres* because the organization is a non-profit consumer privacy advocacy
18 organization that aligns closely with the interests of the Settlement Class.

19 The amount of the Settlement Fund shall not be reduced as a result of any
20 member(s) of the Settlement Class electing to opt out or be excluded from the
21 Settlement or for any other reason. (Agreement § 4.4).

22 **3. Monetary Benefit to Class Members and Class Notice**

23 The Settlement Agreement provides for \$3,725,000 in cash benefits (minus
24 settlement costs, attorney's fees, and litigation costs) to Settlement Class Members
25 on a pro rata basis after the claims period. There are approximately 47,503
26 Settlement Class Members. The Claims Administrator will provide notice first via

27
28 ² Administration costs are currently estimated at \$40,000 and are not expected to
exceed \$75,000.

1 First Class U.S. Mail within 30 days of the Preliminary Approval Order. (Agreement
2 § 9.1.4.) The Claims Administrator will provide email notice to Settlement Class
3 Members for whom it has email addresses and for whom the Claims Administrator
4 does not have a mailing address, or for whom the mail notice was returned as
5 undeliverable. (Agreement § 9.1.6.) Claim Forms will be on the back of the mail
6 notice and will also be available on the Settlement Website. (Agreement § 9.1.5.)
7 The Settlement Website will be maintained for at least 180 days. (Agreement §
8 9.2.2).

9 The Claims Period will commence after the entry of the Preliminary Approval
10 Order and this Claims Period will remain open to all Settlement Class Members to
11 submit a Claim by the last date of the 90-day “Claim Period,” which will be sixty
12 (60) days following the first date of mailing, emailing and/or publication of the Class
13 Notice on the Settlement Website. (Agreement § 10.2.1) Class Members who Opt-
14 Out must submit a Valid Exclusion Request postmarked on or before the Opt-Out
15 and Objection Deadline which is sixty (60) days following the first date of mailing,
16 emailing, and/or publication of the Class Notice on the Settlement Website.
17 (Agreement § 11.1 and § 12.1.)

18 The Class Members who file a Claim Form and do not Opt-Out and/or Object
19 will each receive a pro-rata share. After fees (\$1,241,666.67), costs (\$50,000),
20 incentive award (\$10,000) and administration expenses (up to \$75,000), it is
21 estimated there will be approximately \$2,348,333.33 for the Settlement Class to be
22 distributed pro-rata. If each and every one of the 47,503 Settlement Class Members
23 files a Claims Form and does not Opt-Out or Object, then they would each receive
24 approximately \$49.44. If 5,000 Settlement Class Members file Claim Forms, they
25 would receive approximately \$469.67 each. If 2,500 Settlement Class Members file
26 Claim Forms, they would receive approximately \$939.33 each.

1 **4. Injunctive Relief Benefit to Class Members**

2 Colonial Penn had a *monitoring* disclosure on the affected phone lines prior
 3 to the Action being filed; however, the Parties disagree over whether that was
 4 sufficient under CIPA. Colonial Penn has updated its disclosures, and Plaintiff and
 5 Class Counsel agree that Defendant's current call announcement that calls may be
 6 *recorded* is adequate to obtain consent under CIPA. For any actively used numbers
 7 and that are subject to CIPA, Defendant agrees to maintain that existing disclosure,
 8 or one of a similar form unless and until (1) CIPA is amended, repealed, or otherwise
 9 invalidated by judicial decision as applied to Defendant's practices, or (2) Defendant
 10 provides notice of recording or obtains consent by other means. *See Friedman Decl.*
 11 ¶15.

12 **5. Scope of Release**

13 The scope of the release by all Settlement Class Members who do not request
 14 exclusion includes all claims alleged in the operative complaint and any unpled
 15 claims that could have been alleged based on the same or similar facts as alleged in
 16 the operative complaint which occurred during the Class Period, pertaining to CIPA
 17 or any other law, statutory or common law, which provides a cause of action or
 18 remedy for recording of the Eligible Calls. (Agreement §§ 1.25, 1.26, 1.27 and 16).
 19 The release covers known and unknown claims in connection with the Eligible Calls
 20 during the Class Period. There is a release of unknown claims pursuant to California
 21 Civil Code § 1542 insofar as the claims relate to the subject matter of this Action,
 22 i.e. the recording of telephone calls from telephone numbers with a California area
 23 code to Colonial Penn. (Agreement §16.2.)

24 **6. Opportunity to Opt-Out and Object**

25 As explained before, Settlement Class Members who Opt-Out must postmark
 26 before the Opt-Out Deadline, which will be 60 days following the Class Notice
 27 (Agreement § 11); and the deadline to Object will also be 60 days following Class
 28 Notice (Agreement § 12). Any Settlement Class Member who does not opt out and
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objects to the proposed settlement must mail his or her objection(s) in writing Clerk of the Court, Class Counsel and Defendant's Counsel. To be considered timely, an Objection must be postmarked on or before the Opt-Out and Objection Deadline specified on the Settlement Website, which will be 60 days following Class Notice. (*Id.*) Any Objection must set for the name and case number of this matter, the objecting Settlement Class Member's name, address, telephone number and all arguments, citations and evidence supporting the objection. Furthermore, the Objection shall include: whether the objector intends to appear at the hearing, with or without counsel; the name and case number of any other proposed class action settlement the Settlement Class Member submitted an objection to; and whether any such objection was submitted on the Settlement Class Member's behalf or on behalf of a represented third party. (*Id.*)

7. Payment of Notice and Administrative Costs

After final judgment is issued, Colonial Penn will make a single payment of \$3,725,000 into an escrow account held by the Settlement Administrator. (Agreement § 4). The Settlement Administrator will use these funds to administer all costs of the settlement, including providing Class Notice, providing CAFA notice, maintaining the website and toll-free number and arranging for payments to Settlement Class Members. (*Id.*) The funds shall also be used to cover Attorneys' Fee Award to Class Counsel and the Service Award to plaintiff Mark Cole. (*Id.*)

8. Class Representative's Application for Service Award

The proposed Settlement contemplates that Class Counsel will request a Service Award in the amount of \$10,000 to be distributed to Plaintiff for his service as Class Representative, subject to Court approval. Colonial Penn has agreed not to oppose the request as long as it is not greater than \$10,000. (Agreement § 7).

9. Class Counsel's Application for Attorneys' Fees, Costs and Expenses

The proposed Settlement contemplates that Class Counsel shall apply to the PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

1 Court for an award of attorneys' fees in the amount of \$1,241,666.67 (33 1/3% of
2 the Settlement Fund) and litigation costs of less than \$50,000. (Agreement § 6.)

3 **10. Cy Pres Distribution.**

4 Under the proposed Settlement, any funds remaining after payment of all
5 settlement costs and payments to the Settlement Class shall be paid to a *cy pres*
6 recipient. (Agreement § 15.5). The Parties propose EPIC, which is an appropriate
7 *cy pres* because it is a non-profit consumer privacy advocacy organization that is
8 closely aligned to the issues in this litigation and will aid the privacy interests of the
9 Settlement Class. Since the distribution is pro-rata for those who file Claim Forms,
10 this *cy pres* distribution is not expected to be substantial.

11 **III. ARGUMENT**

12 **A. The Legal Standards for Preliminary Approval of a Class Action** 13 **Settlement**

14 A class action may not be dismissed, compromised or settled without the
15 approval of the court. Fed. R. Civ. Proc. 23(e). Judicial proceedings under Rule 23
16 have led to a defined procedure and specific criteria for settlement approval in class
17 action settlements, described in the *Manual for Complex Litigation* (Fourth) (Fed.
18 Judicial Center 2004) ("*Manual*") § 21.63, *et seq.*, including preliminary approval,
19 dissemination of notice to class members, and a fairness hearing. *Manual*,
20 §§ 21.632, 21.633, 21.634. The purpose of the Court's preliminary evaluation of the
21 settlement is to determine whether it is within the "range of reasonableness," and
22 thus whether notice to the class of the terms and conditions of the settlement, and
23 the scheduling of a formal fairness hearing, are worthwhile. *See* 4 Herbert B.
24 Newberg, *Newberg on Class Actions* § 11.25 *et seq.*, and § 13.64 (4th ed. 2002 and
25 Supp. 2004) ("*Newberg*"). The Court is not required to undertake an in-depth
26 consideration of the relevant factors for final approval. Instead, the "judge must
27 make a preliminary determination on the fairness, reasonableness, and adequacy of
28 the settlement terms and must direct the preparation of notice of the certification,
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1 proposed settlement, and date of the final fairness hearing.” *Manual*, § 21.632 (4th
2 ed. 2004).

3 As a matter of public policy, settlement is a strongly favored method for
4 resolving disputes. *See Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d
5 437, 443 (9th Cir. 1989). This is especially true in class actions such as this. *See*
6 *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615 (9th Cir. 1982). As a
7 result, courts should exercise their discretion to approve settlements “in recognition
8 of the policy encouraging settlement of disputed claims.” *In re Prudential Sec. Inc.*
9 *Ltd. Partnerships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995). To make the
10 preliminary fairness determination, courts may consider several relevant factors,
11 including “the strength of the plaintiff’s case; the risk, expense, complexity, and
12 likely duration of further litigation; the risk of maintaining class action status through
13 trial; the amount offered in settlement; the extent of discovery completed and the
14 stage of the proceedings; [and] the experience and views of counsel” *See*
15 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“*Hanlon*”).
16 Furthermore, courts must give “proper deference to the private consensual decision
17 of the parties,” since “the court’s intrusion upon what is otherwise a private
18 consensual agreement negotiated between the parties to a lawsuit must be limited to
19 the extent necessary to reach a reasoned judgment that the agreement is not the
20 product of fraud or overreaching by, or collusion between, the negotiating parties,
21 and that the settlement, taken as a whole, is fair, reasonable and adequate to all
22 concerned.” *Id.* at 1027.

23 Preliminary approval does not require the Court to make a final determination
24 that the settlement is fair, reasonable, and adequate. Rather, that decision is made
25 only at the final approval stage, after notice of the settlement has been given to the
26 class members and they have had an opportunity to voice their views of the
27 settlement or to exclude themselves from the settlement. *See* 5 James Wm. Moore,
28 *Moore’s Federal Practice – Civil* § 23.165[3] (3d ed.). Thus, in considering a
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1 potential settlement, the Court need not reach any ultimate conclusions on the issues
2 of fact and law which underlie the merits of the dispute, *West Va. v. Chas. Pfizer &*
3 *Co.*, 440 F.2d 1079, 1086 (2d Cir. 1971), and need not engage in a trial on the merits,
4 *Officers for Justice v. Civil Service Comm’n*, 688 F.2d at 625. Preliminary approval
5 is merely the prerequisite to giving notice so that “the proposed settlement . . . may
6 be submitted to members of the prospective class for their acceptance or rejection.”
7 *Philadelphia Hous. Auth. v. Am. Radiator & Standard Sanitary Corp.*, 323 F. Supp.
8 364, 372 (E.D. Pa. 1970).

9 Preliminary approval of the settlement should be granted if, as here, there are
10 no “reservations about the settlement, such as unduly preferential treatment of class
11 representatives or segments of the class, inadequate compensation or harms to the
12 classes, the need for subclasses, or excessive compensation for attorneys.” *Manual*
13 *for Complex Litigation* § 21.632, at 321 (4th ed. 2004).

14 Furthermore, the opinion of experienced counsel supporting the settlement is
15 entitled to considerable weight. *See., e.g., Kirkorian v. Borelli*, 695 F.Supp. 446
16 (N.D. Cal.1988) (opinion of experienced counsel carries significant weight in the
17 court’s determination of the reasonableness of the settlement); *Boyd v. Bechtel*
18 *Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979) (recommendations of plaintiffs’
19 counsel should be given a presumption of reasonableness).

20 The decision to approve or reject a proposed settlement “is committed to the
21 sound discretion of the trial judge[.]” *See Hanlon*, 150 F.3d at 1026. This discretion
22 is to be exercised “in light of the strong judicial policy that favors settlements,
23 particularly where complex class action litigation is concerned,” which minimizes
24 substantial litigation expenses for both sides and conserves judicial resources. *See*
25 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (quotations
26 omitted).

27 Based on these standards, Plaintiff respectfully submits that, for the reasons
28 detailed below, the Court should preliminarily approve the proposed Settlement as
PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

1 fair, reasonable and adequate.

2 **B. Liability is Highly Contested and Both Sides Face Significant**
 3 **Challenges in Litigating this Case**

4 Defendant Colonial Penn has vigorously contested the claims asserted by
 5 Plaintiff in this Action. While both sides strongly believed in the merits of their
 6 respective cases, there are risks to both sides in continuing the Action. *See*
 7 *Friedman Decl*, ¶¶ 42-44. In considering the Settlement, Plaintiff and Class
 8 Counsel carefully balanced the risks of continuing to engage in protracted and
 9 contentious litigation against the benefits to the Settlement Class. As a result, Class
 10 Counsel supports the Settlement and seeks its Preliminary Approval. *Id.*

11 Similarly, Colonial Penn believes that it has strong and meritorious defenses
 12 not only to the action as a whole, but also as to class certification and the amount of
 13 damages sought.

14 The negotiated Settlement reflects a compromise between avoiding that risk
 15 and the risk that the class might not recover. Because of the costs, risks to both
 16 sides, and delays of continued litigation, the Settlement presents a fair and
 17 reasonable alternative to continuing to pursue the Action.

18 **C. Defendant's Agreement to Finance the Settlement Fund Provides a**
 19 **Fair and Substantial Benefit to the Class**

20 As set forth above, Defendant has agreed to pay \$3,725,000 to fund the
 21 settlement, which includes notice and claims administration costs, creating and
 22 maintaining a Settlement Website and toll free number, providing CAFA notice, an
 23 Service Award to Plaintiff Mark Cole in the amount of \$10,000, and attorneys' fees
 24 in the amount of no more than \$1,241,666.67 and reimbursement of litigation costs
 25 of up to \$50,000. *See Friedman Decl*, ¶¶ 27-29.

26 **D. The Settlement was Reached as the Result of Arms-Length**
 27 **Negotiation, Without Collusion, with the Assistance of the**
 28 **Mediator**

1 The proposed Settlement is the result of intensive arms-length negotiation,
2 including an all-day mediation session before the Honorable Wayne R. Andersen
3 (Ret) of JAMS on June 25, 2024. The Parties did not resolve the case at the
4 mediation on June 25, 2024, but subsequently resolved the matter over the course
5 of ten additional months of negotiation and further discussions thereafter with the
6 assistance of Judge Andersen. *See Friedman Decl*, ¶¶ 8,9. Class Counsel are
7 satisfied that the discovery provided about the number of unique telephone numbers
8 and telephone calls which were recorded is accurate, as it was authenticated via
9 discovery and numerous detailed calls and exchanges, as well as third party
10 verification. The time and effort spent examining and investigating the claims
11 militate in favor of preliminary approval of the proposed Settlement, as the process
12 strongly indicates that there was no collusion. *See In re Wireless Facilities, Inc.*
13 *Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008) (“Settlements that follow
14 sufficient discovery and genuine arms-length negotiation are presumed fair.”). The
15 Ninth Circuit has long supported settlements reached by capable opponents in arms’
16 length negotiations.

17 In *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009), the
18 Ninth Circuit expressed the opinion that courts should defer to the “private
19 consensual decision of the [settling] parties.” *Id.* at 965 (citing *Hanlon*, 150 F.3d at
20 1027 (9th Cir. 1998)); *See also M. Berenson Co.*, 671 F. Supp. at 822; *Ellis*, 87
21 F.R.D. at 18 (“that experienced counsel involved in the case approved the settlement
22 after hard-fought negotiations is entitled to considerable weight”); 2 Newberg on
23 Class Actions § 11.24 (4th Ed. & Supp. 2002); Manual for Complex Lit., Fourth §
24 30.42; *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of San Francisco*,
25 688 F.2d 615, 625 (9th Cir. 1982)); *Lundell v. Dell, Inc.*, 2006 WL 3507938 (N.D.
26 Cal. Dec. 5, 2006). In *Hanlon*, the Ninth Circuit also held that where settlement
27 terms are reached through formal mediation, the Court may rely upon the mediation
28 proceedings “as independent confirmation that the fee was not the result of
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collusion or a sacrifice of the interests of the class.” *Hanlon*, 150 F.3d at 1029; *see also Milliron v. T-Mobile USA, Inc.*, 2009 WL 3345762, at *5 (D.N.J. Sept. 14, 2009) (holding that “the participation of an independent mediator in settlement negotiation virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties”); *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) (“the assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive”); *Dennis v. Kellogg Co.*, 2010 WL 4285011, at *4 (S.D. Cal. Oct. 14, 2010) (the parties engaged in a “full-day mediation session,” which helped to establish that the proposed settlement was non-collusive); 2 *McLaughlin on Class Actions*, § 6:7 (8th ed.) (“A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion”).

E. The Experienced Counsel Have Determined that the Settlement is Appropriate and Fair to the Settlement Class

The Parties are represented by counsel experienced in complex class action litigation. Class Counsel has extensive experience in class actions, as well as particular expertise in class actions relating to consumer protection, including actions under CIPA . *See Friedman Decl*, ¶¶ 47-52; Declaration of Zev Zysman at ¶ 14. Class Counsel believe that under the circumstances, the proposed Settlement is fair, reasonable and adequate and in the best interests of the Class Members. *See Friedman Decl*, ¶¶ 41-43; Zysman Decl. ¶¶ 10-16 .

F. The Court Should Preliminarily Certify the Class for Purposes of Settlement

Courts have long acknowledged the propriety of class certification for purposes of a class action settlement. *See In re Wireless Facilities*, 253 F.R.D. at 610 (“Parties may settle a class action before class certification and stipulate that a defined class be conditionally certified for settlement purposes”). Certification of a class for settlement purposes requires a determination that certain requirements of

PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

1 Rule 23 are met. *Id.* As explained below, class certification is appropriate here
2 because the proposed Settlement meets the requirements of Rule 23(a) and Rule
3 23(b)(3) for settlement purposes.

4 **G. The Proposed Settlement Class is Numerous.**

5 Class certification under Rule 23(a)(1) is appropriate where a class contains
6 so many members that joinder of all would be impracticable. “Impracticability does
7 not mean ‘impossibility,’ but only the difficulty or inconvenience of joining all
8 members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909,
9 913-14 (9th Cir. 1964) (citation omitted). Here, the Settlement Class consists of
10 approximately 47,503 people that placed an Eligible Call with Colonial Penn during
11 the Class Period. Thus, the proposed Settlement Class is sufficiently numerous for
12 purposes of certifying a settlement class.

13 **H. The Commonality Requirement is Satisfied, Because Common**
14 **Questions of Law and Fact Exist.**

15 The commonality requirement is met if there are questions of law and fact
16 common to the class. *Hanlon*, 150 F.3d at 1019 (“The existence of shared legal
17 issues with divergent legal factual predicates is sufficient, as is a common core of
18 salient facts coupled with disparate legal remedies within the class.”). Here, for
19 purposes of settlement, the proposed Settlement Class Members’ claims stem from
20 the same factual circumstances, specifically that Colonial Penn participated in
21 telephone calls with Settlement Class Members and allegedly did not timely inform
22 them that the calls were being recorded.

23 Plaintiff’s claims also present questions of law that are common to all
24 members of the Settlement Class for settlement purposes, including: (1) whether
25 Colonial Penn violated CIPA; and (2) whether Colonial Penn’s consumers
26 consented to their calls being recorded. The Settlement Class Members all seek the
27 same remedy. Under these circumstances, the commonality requirement is satisfied
28 for purposes of certifying a settlement class. *See Hanlon*, 150 F. 3d at 1019-20.

I. The Typicality Requirement is Met.

The typicality requirement is met if the claims of the named representatives are typical of those of the class, though “they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. For purposes of settlement, Plaintiff’s claims are typical of the class because they arise from the same factual basis – calls with Plaintiff’s telephone were recorded without consent – and are based on the same legal theory – the calls allegedly violated CIPA. *See Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987). The Class Representative claims that he called Colonial Penn from a California area code and participated in a call with Colonial Penn where Colonial Penn purportedly did not disclose that the call was being recorded. Accordingly, the Class Representative’s claims are typical of those of the Settlement Class. Thus, the typicality requirement is satisfied for purposes of certifying a settlement class.

J. The Adequacy Requirement is Satisfied.

Rule 23(a)(4) is satisfied if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The Court must measure the adequacy of representation by two standards: “(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *In re Wireless Facilities*, 253 F.R.D. at 611 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 958 (9th Cir. 2003)).

Plaintiff and Class Counsel have no conflicts of interest with other Settlement Class Members because, for purposes of the Settlement, Plaintiff’s claims are typical of those of other Settlement Class Members. In addition, Plaintiff and Class Counsel have been prosecuting this Action vigorously on behalf of the class. Plaintiff and Settlement Class Members share the common goal of protecting and improving consumer and privacy rights throughout the nation, and there is no conflict among them. Class Counsel have extensive experience in consumer

litigation, including the prosecution of class actions seeking to protect privacy and consumer rights, including CIPA actions. Class Counsel is qualified to represent the interests of the class. Rule 23(a)(4) is therefore satisfied for purposes of certifying a settlement class.

K. Common Questions Predominate, Sufficient to Certify a Class for Settlement Purposes Only.

Class certification under Rule 23(b)(3) is appropriate where “questions of law or fact common to class members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). The inquiry focuses on whether the class is “sufficiently cohesive to warrant adjudication by representation.” *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Central to this question is “the notion that the adjudication of common issues will help achieve judicial economy.” *Zincser v. Accufix Research Institute, Inc.*, 253 F.3d 1188, 1189 (9th Cir. 2001) (citation omitted), amended, 273 F. 3d 1266 (9th Cir. 2001).

Here the central inquiry for purposes of the proposed Settlement is whether Colonial Penn violated CIPA by participating in telephone calls with Settlement Class Members and purportedly failing to disclose that the calls were being recorded. “When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022.

L. Class Treatment for Settlement Purposes is Superior to Individual Resolutions.

To determine whether the superiority requirements of Rule 23(b)(3) are satisfied, a court must compare a class action with alternative methods for adjudicating the parties’ claims. Lack of a viable alternative to a class action necessarily means that a class action satisfies the superiority requirement. “[I]f a

comparable evaluation of other procedures reveals no other realistic possibilities, [the] superiority portion of Rule 23(b)(3) has been satisfied.” *Culinary/Bartenders Trust Fund*, 244 F.3d at 1163. *See also, Valentino v. Carter-Wallace*, 97 F.3d 1227, 1235-36 (9th Cir. 1996) (“a class action is a superior method for managing litigation if no realistic alternative exists”).

Consideration of the factors listed in Rule 23(b)(3) supports the conclusion that, for purposes of a settlement class, certification is appropriate. Ordinarily, these factors are (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action. Fed. R. Civ. P. 23(b)(3).

However, when a court reviews a class action settlement, the fourth factor does not apply. In deciding whether to certify a settlement class action, a district court “need not inquire whether the case, if tried, would present intractable management problems.” *Amchem Prods. Inc. v. Woodward*, 521 U.S. 591, 620 (1997). “With the settlement in hand, the desirability of concentrating the litigation in one forum is obvious” *Elkins v. Equitable Life Ins. of Iowa*, No. Civ A96-296-Civ-T-17B, 1998 WL 133741, at *20 (M.D. Fla. Jan. 27, 1998); *see also Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D. Fla. 2005) (Rule 23(b)(3)(C) and (D) factors are “conceptually irrelevant in the context of settlement”) (citation omitted). Here, the Rule 23(b)(3)(A), (B) and (C) factors all favor class certification:

- Any Settlement Class Member who wishes to pursue a separate action can opt out of the Settlement.
- The Parties are unaware of any competing litigation regarding claims at issue.

- Plaintiff believes this forum is appropriate, and Defendant does not oppose the forum.

M. The Proposed Class Notice is Consistent with Ninth Circuit Requirements and Provides Adequate Notice for Claims, Objections and Opt Outs.

Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3), the court must order the “best notice practicable” under the circumstances. Rule 23(c)(2)(B) does not require “actual notice” or that a notice be “actually received.” *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Notice need only be given in a manner “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). “Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025.

Pursuant to Fed. R. Civ. P. 23(e)(1)(B), “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Rule 23(c)(2)(B) also sets forth requirements as to the content of the notice. The notice must concisely and clearly state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through counsel if the member so desires; (v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on class members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

The Settlement Administrator shall disseminate or arrange for the dissemination of Class Notice via postcard and/or email in a form materially consistent with Exhibit 1-C and 1-D to the Agreement. The Class Notice here satisfies each of the requirements of Rule 23(c)(2)(B) above. Further, mailed

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1 postcard and email notice have routinely been held to be adequate notice to a
2 Settlement Class. *See Schaffer v. Litton Loan Servicing, LP*, CV 05-07673 MMM
3 JCX, 2012 WL 10274679, at *8 (C.D. Cal. Nov. 13, 2012) (approving notice plan
4 where class members were sent postcards that directed them to a settlement
5 website); *Lo v. Oxnard European Motors, LLC*, 11CV1009 JLS MDD, 2012 WL
6 1932283, at *1 (S.D. Cal. May 29, 2012) (final approval of class settlement using
7 postcard notice and settlement website).

8 The Parties possess records of the telephone numbers involved during the
9 class period. Colonial Penn maintains name and address information for many of
10 these individuals. For those for whom a valid address is not maintained by Colonial
11 Penn, the Settlement Administrator will employ reverse telephone look-up
12 procedures to identify the names and physical and email addresses associated with
13 the telephone numbers identified on the Settlement Class list. The Settlement
14 Administrator will run the names and addresses obtained via this process through
15 the National Change of Address (NCOA) database. To the extent any physical
16 addresses identified through reverse look-up are no longer valid, the Settlement
17 Administrator will send Class Notice to any forwarding addresses that are provided.
18 *See generally Barani v. Wells Fargo Bank, N.A.*, Case No. 12CV2999-GPC KSC,
19 2014 WL 1389329, at *10 (S.D. Cal. Apr. 9, 2014) (approving settlement in TCPA
20 class action using reverse lookup to locate class members).

21 Further, the Settlement Website, which will contain the Q & A Notice (Ex.
22 1-E to the Agreement), the Claim Form (Ex. 1-A to the Agreement), the Settlement
23 Agreement, the Preliminary Approval Order, Plaintiff's fee brief and an online
24 submission for Claims Forms. Further, pursuant to the Agreement "any other
25 materials the Parties agree to include" may be put on the Settlement Website.
26 (Agreement § 9.2.2).

27 The notices and settlement documents will be disseminated and posted on
28 the Settlement Website sufficiently prior to the Final Approval Hearing to give
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

1 Settlement Class Members the opportunity to comment on the Settlement, or to opt
 2 out and preserve their rights. Specifically, Settlement Class Members will have 60
 3 days from the time dissemination of Class Notice has been completed to opt out of
 4 the settlement or object. *Cf. Torrisi v. Tucson Electric Power Co.*, 8 F.3d 1370,
 5 1374-1375 (9th Cir. 1993) (31 days is more than sufficient, as Class as a whole had
 6 notice adequate to flush out whatever objections might reasonably be related to the
 7 settlement) (citing *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir.
 8 1977) (approving timing of notice which was mailed 26 days before the deadline
 9 for opting out of the settlement)). Further, the Settlement Website shall be
 10 maintained and accessible to Settlement Class Members during this time and
 11 through the conclusion of the settlement proceedings in this case.

12 This notice program was designed to meaningfully reach the largest number
 13 of Settlement Class Members possible. Since the calls at issue were made within
 14 the past couple years and Colonial Penn has names and addresses correlating with
 15 a substantial percentage of the Settlement Class Members, mailed postcard and
 16 email notice will likely reach most Settlement Class Members.³

17 The concurrent dissemination of the Q & A Notice on the Settlement
 18 Website, combined with Mail and/or Email Notice, satisfies the requirements of due
 19 process and constitutes the best notice practicable under the circumstances.

20 The Settlement Administrator shall prepare and file a declaration prior to the
 21 Final Approval Hearing certifying that the notice program has been properly
 22 administered in accordance with the Settlement Agreement, this Court's Orders,
 23 and as described herein.

24
 25
 26 ³ While the actual reverse lookup procedure has to be conducted to be certain of this,
 27 Class Counsels' experience is that in similar settlements, with similar notice
 28 programs, it is customary for 80-95% of the Class to be directly reached by such a
 notice program.

N. The Court Should Preliminarily Certify the Class for Purposes of Settlement.

“[T]wo criteria for determining the adequacy of representation have been recognized. First, the named representatives must appear able to prosecute the action vigorously through qualified counsel, and second, the representatives must not have antagonistic or conflicting interests with the unnamed members of the class.” *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). The adequacy of representation requirement is met here. For settlement purposes, Class Counsel moves for Plaintiff Mark Cole to be preliminarily appointed as the Settlement Class Representative. Class Counsel requests that Todd M. Friedman and Adrian Bacon of The Law Offices of Todd M. Friedman, P.C., and Zev B. Zysman from the Law Offices of Zev B. Zysman, APC, preliminarily be appointed as Class Counsel for purposes of the Settlement. Plaintiff’s counsel has extensive experience sufficient to be appointed as Class Counsel. Plaintiff Cole understands the obligations of serving as a class representative, has adequately represented the interests of the putative class, and has retained experienced counsel. Plaintiff has no antagonistic or conflicting interests with the Settlement Class, and all members of the Settlement Class are eligible to receive the same benefits.

O. The Court Should Appoint Simpluris as the Settlement Administrator

The proposed Agreement recommends that the Court appoint Simpluris to serve as the Settlement Administrator. Simpluris specializes in providing administrative services in class action litigation, and has extensive experience in administering consumer protection and privacy class action settlements. Defendant does not oppose this request.

P. Final Approval Hearing Should be Scheduled

The last step in the settlement approval process is the formal fairness or Final Approval Hearing, at which time the Court will hear all evidence and argument, for

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1 and against, the proposed Settlement. Plaintiff requests that the Court grant
2 preliminary approval of the Settlement and schedule a Final Approval Hearing to
3 be held not before 130 days after the date of entry of the Preliminary Approval
4 Order, in order to allow sufficient time for providing CAFA Notice, the toll-free
5 number and the Settlement Website, and completion of the period for class members
6 to submit exclusion requests, objections and claims.

7 **IV. CONCLUSION**

8 For all the foregoing reasons, Plaintiff respectfully requests that the Court
9 enter an Order preliminarily approving the proposed Settlement and certifying a
10 class for settlement purposes.

11
12 Date: July 18, 2025

The Law Offices of Todd M. Friedman, PC

13 By: /s/ Todd M. Friedman
14 Todd M. Friedman
15 *Attorneys for Plaintiffs*
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CERTIFICATE OF SERVICE

Filed electronically on this 18th day of July, 2025, with:

United States District Court CM/ECF system

Notification sent electronically on this 18th day of July, 2025, to:

Honorable Judge Dena M. Coggins

United States District Court

Central District of California

Rachel Lowe, Esq.

Kathy J. Huang, Esq.

Alston & Bird LLP

350 South Grand Avenue, 51st Floor

Los Angeles, California 90071

s/Todd M. Friedman

Todd M. Friedman, Esq.